

IRELL & MANELLA LLP
Morgan Chu (SBN 70446)
Benjamin W. Hattenbach (SBN 186455)
A. Matthew Ashley (SBN 198235)
Michael D. Harbour (SBN 298185)
Olivia Weber (SBN 319918)
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067-4276
Telephone: (310) 277-1010
Facsimile: (310) 203-7199
Email: mchu@irell.com
Email: bhattenbach@irell.com
Email: mashley@irell.com
Email: oweber@irell.com
Email: mharbour@irell.com

Counsel for Defendants
FORTRESS INVESTMENT GROUP LLC,
FORTRESS CREDIT CO. LLC,
VLSI TECHNOLOGY LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

INTEL CORPORATION and APPLE INC.,

Plaintiffs,

v.

FORTRESS INVESTMENT GROUP LLC,
FORTRESS CREDIT CO. LLC, UNILOC
2017 LLC, UNILOC USA, INC., UNILOC
LUXEMBOURG S.A.R.L., VLSI
TECHNOLOGY LLC, INVT SPE LLC,
INVENTERGY GLOBAL, INC., DSS
TECHNOLOGY MANAGEMENT, INC., IXI
IP, LLC, and SEVEN NETWORKS, LLC,

Defendants.

Case No. 3:19-cv-07651-EMC

**DECLARATION OF MICHAEL D.
HARBOUR IN SUPPORT OF
DEFENDANTS' JOINT MOTION TO
DISMISS AND STRIKE PLAINTIFFS'
COMPLAINT**

Hon. Edward M. Chen

Date: April 23, 2020

Time: 1:30 p.m.

Dept.: Courtroom 5

1 I, Michael D. Harbour, declare as follows:

2 1. I am an attorney at law, admitted to practice in the United States District Court,
3 Northern District of California, and I am an associate with the law firm of Irell & Manella LLP,
4 counsel for defendants Fortress Investment Group LLC, Fortress Credit Co. LLC, and VLSI
5 Technology LLC in this matter. I have personal knowledge of each fact stated in this declaration
6 and, if called as a witness, I could and would competently and truthfully testify thereto.

7 2. I submit this declaration in support of Defendants' Joint Motion to Dismiss and
8 Strike Plaintiffs' Complaint.

9 3. On January 30, 2020, I performed a search for all patents that have been assigned to
10 Intel Corporation from January 1, 2000 until January 28, 2020 using the Patent Full-Text Database
11 ("PaFT") which is maintained by the United States Patent and Trademark Office ("USPTO"). I
12 accessed the PaFT Database at the following web address: <http://patft.uspto.gov/>. A true and
13 correct screenshot of the first page of this search is attached as Exhibit A.

14 4. On January 30, 2020, I performed a search for all patents that have been assigned to
15 Apple Inc. from January 1, 2000 until January 28, 2020 using the PaFT Database. A true and
16 correct screenshot of the first page of this search is attached as Exhibit B.

17 5. The USPTO has established a patent classification scheme called the Cooperative
18 Patent Classification ("CPC"). This classification scheme is publicly available at the following
19 website: <https://www.uspto.gov/web/patents/classification/cpc/html/cpc.html>. The classification
20 symbol G06F is given to patents that cover "Electric Digital Data Processing." The classification
21 symbol H01L is given to patents that cover "Semiconductor Devices."

22 6. On January 30, 2020, I used the PaFT Database to perform a search for all patents
23 that have been classified under G06F ("Electric Digital Data Processing") from January 1, 2000
24 until January 28, 2020. A true and correct screenshot of the first page of this search is attached as
25 Exhibit C.

26 7. On January 30, 2020, I used the PaFT Database to perform a search for all patents
27 that have been classified under H01L ("Semiconductor Devices") from January 1, 2000 until
28 January 28, 2020. A true and correct screenshot of this search is attached as Exhibit D.

8. The USPTO maintains a publicly available database for searching patent assignments that have been registered with the USPTO. This database is located at the following web address: <https://assignment.uspto.gov/patent/index.html#/patent/search>. Using this database, I searched for and obtained a copy of a June 5, 2014 recorded assignment in which IXI IP, LLC conveyed an interest in certain patents to Fortress Credit Co. LLC. A true and correct copy of this document is attached as Exhibit E. I also searched for and obtained a copy of a February 13, 2014 recorded assignment in which DSS Technology Management, Inc. conveyed an interest in certain patents to Fortress Credit Co. LLC. A true and correct copy of this document is attached as Exhibit F.

9. In various court filings in the underlying patent infringement litigations that form the basis of Plaintiffs' antitrust and California unfair competition claims, Plaintiffs Apple Inc. and Intel Corporation have both repeatedly stated that they do not compete with Defendants. These statements include but are not limited to the following:

- Intel's Motion to Stay Pending *Inter Partes* Review, *DSS Technology Management, Inc. v. Intel Corporation*, No. 6:15-cv-130-RWS (E.D. Tex. Dec. 22, 2015), Dkt. 186 at 1 ("DSS is not a competitor of any of the Defendants and does not purport to practice the asserted patents.");
- Defendants' Motion to Stay Pending *Inter Partes* Review, *IXI Mobile (R&D) Ltd. v. Apple Inc.*, No. 15-cv-03755-HSG (N.D. Cal. Oct. 01, 2015), Dkt. 106 at 8:8 ("IXI IP, the patent owner, does not make any products or compete with the Defendants[.]");
- Defendant Intel Corporation's Notice of Motion and Motion to Stay Pending *Inter Partes* Review, *VLSI Technology, LLC v. Intel Corporation*, 5:17-cv-05671-BLF (N.D. Cal. Feb. 28, 2019), Dkt. 250 at 2:10-11 ("VLSI does not make or sell any products, or compete with Intel.");
- Respondents' Post-Hearing Reply Brief, *In the Matter of Certain LTE-And 3G-Compliant Cellular Communication Devices*, No.: 337-TA-1138 (USITC Nov. 13,

2019), Doc. ID, 695147 at 80 (“INVT and Respondents [including Apple] are not competitors[.]”) (public version).

10. On October 21, 2019, Intel Corporation filed a complaint against many of the same Defendants in this matter in the Northern District of California. *Intel Corporation v. Fortress Investment Group LLC et al.*, No. 5:19-cv-06856 (N.D. Cal. Oct. 21, 2019). This complaint contained many of the same allegations and raised similar causes of action as the complaint in the present matter. On November 5, 2019, Defendant VLSI Technology LLC (“VLSI”) filed an Administrative Motion to Consider whether this case was related to another case pending in the Northern District of California. *VLSI Technology LLC v. Intel Corp.*, No. 5:17-CV-05671-BLF (N.D. Cal. Nov. 5, 2019). In opposing this motion, Intel Corporation asserted that VLSI had pursued a “Fortress-led strategy to engage in aggressive serial assertions with the objective of eventually obtaining a windfall.” Intel’s Opposition to Motion to Consider Whether Cases are Related, *VLSI Technology LLC v. Intel Corporation*, Case No. 5:17-cv-05671-BLF (N.D. Cal. Nov. 12, 2019), Dkt. 269 at 3:1-2.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on February 4, 2020 at Los Angeles, California.

By: /s/ Michael D. Harbour
Michael D. Harbour

ECF ATTESTATION

I, Olivia Lauren Weber, am the ECF user whose ID and password are being used to file
DECLARATION OF MICHAEL D. HARBOUR IN SUPPORT OF DEFENDANTS' JOINT
MOTION TO DISMISS AND STRIKE PLAINTIFFS' COMPLAINT. I hereby attest that I
received authorization to insert the signatures indicated by a conformed signature (/s/) within this
e-filed document.

By: /s/ Olivia Lauren Weber
Olivia Lauren Weber